XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर (27)

मामला क्रमांक CrA No 1078 सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANTS: 1.	Posuram Deshmukh, S/o Govind Deshmukh, Aged about 22 years, Profession Student.
	2.	Badaku alias Komal, S/o Govind Deshmukh, Aged about 37 years, Profession Agriculture
		Both resident of Village Birajhar, Chowki Anjora, P/S Pulgaon, District Durg (C.G.)
	-Versus-	
	RESPONDENT	State of Chhattisgarh

(Criminal Appeal under Section 374 (2) of the Cr.P.C.)

Division Bench : -

Hon'ble Shri L.C. Bhadoo &

Hon'ble Shri Sunil Kumar Sinha, JJ.

9-8-2007:-

Shri Arun Kochar, counsel for the appellants.

Shri Ashish Shukla, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on *Dais*.

L.C. BHADOO, J.

By this appeal under Section 374 (2) of the Cr.P.C. the accused/ appellants have questioned legality and correctness of the judgment of

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	conviction and order of sentence dated 25th September, 2002, passed by the Special Judge & Additional Sessions Judge, Durg, in S.T. No.194/2001 whereby learned Additional Sessions Judge after holding the accused/ appellants guilty for commission of offence under Section 302 read with Section 34 of the I.P.C., sentenced each of the accused to undergo imprisonment for life & to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 3 months. However, accused Pooran and Prahlad @ Gudda have been acquitted of the offence under Section 302 read with Section 34 of the I.P.C. The case of the prosecution, in brief, is that on 19-9-2000 Hiralal (since deceased) along with Dhaneshwari (PW-1) went to his agricultural field at about 10 a.m. for blocking the water course. When Hiralal and Dhaneshwari were busy in blocking the water course, accused Badku @ Komal and Posu came near Hiralal, asked Hiralal not to block the water course, on which Hiralal said that if he will not block the water course, then water will not come to his field and his field will become dry. On that, some altercation took place between them, at that time accused Posu was carrying Chatwar, a square iron plate fitted at the one end of the stick, (agricultural instrument), accused Badku was carrying lathi. Both of them started attacking with those weapons. When Dhaneshwari, daughter-in-law of Hiralal, came to intervene, the accused persons pushed her as a result of which her glass bangles were broken, she sustained abrasions injuries. Blood started oozing out of the injuries sustained by Hiralal. He fell down on the field. The accused persons fled from the scene of occurrence. Dhaneshwari had gone to village and informed sister-in-law	

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Bhanbai and villagers. She informed her brother-in-law also. Thereafter, she along with her brother-in-law took Hiralal to the out post Anjora, P.S. Pulgaon. She lodged a report Ex.P/1. When Hiralal was being taken for examination to the Government Hospital, Durg, he succumbed to the injuries on the way. Certificate Ex.P/18 was given by the doctor, based on that, merg intimation Ex.P/30 was written. Based on the report Ex.P/1, Police Station Pulgaon registered FIR Ex.P/31.

After informing the witnesses under Ex.P/5, I.O. prepared inquest Ex.P/6 on the body of deceased Hiralal. The body of the deceased was sent for postmortem examination under Ex.P/16. PW-8 Dr. Lal Mohammed conducted the postmortem on the body of the deceased, prepared postmortem report Ex.P/17. He opined that cause of death of the deceased was shock as a result of fracture of head bone. Injuries were sufficient in the ordinary course of nature to cause the death. Dhaneshwari was also medically examined. Injury report Ex.P/13 was prepared. Patwari prepared site plan Ex.P/2. Site plan Ex.P/7 was prepared by the investigating officer. Under Ex.P/12 Chappals, clothes of the deceased, broken pieces of bangles of Dhaneshwari, plain soil and blood stained soil were seized. The seized articles were sent to FSL under Ex.P/19.

During the investigation, accused Badku gave memorandum Ex.P/8, in pursuance of that he got recovered bamboo club under Ex.P/10. Accused Posu gave memorandum Ex.P/9, in pursuance of that, Chatwar, a square iron plate fitted at the one end of the stick (agricultural instrument) was seized under Ex.P/11.

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After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Durg, who in turn committed the case to the Sessions Judge, Durg, from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused persons examined 12 witnesses. Statements of the accused persons were recorded under Section 313 Cr.P.C. in which they denied material appearing against them in the prosecution evidence, stated that they are innocent and have been implicated in a false case. They examined two defence witnesses namely, DW-1 Tikaram and DW-2 Homeshwar Prasad. They have stated that Pooran, Sarpanch, who has been acquitted, was not present on the scene of occurrence.

Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused persons as aforesaid whereas, acquitted accused Pooran and Prahlad @ Gudda.

We have heard Shri Arun Kochar, counsel for the appellants and Shri Ashish Shukla, Additional Public Prosecutor for the State/respondent.

At the outset, learned counsel for the accused/appellants has not disputed homicidal death of the deceased. Moreover, PW-1 Dhaneshwari, is an injured eyewitness. She has stated that accused Posu and Badku attacked the deceased with Chatwar and bamboo club. The evidence of this eyewitness is corroborated by the evidence of PW-8 Dr. Lal Mohammed. He has stated that he conducted postmortem on the body of

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the deceased on 20th September, 2000. He has further stated that there were injuries on the head, skull bone was fractured. Cause of death was shock and fracture of skull bone. Death was homicidal in nature. Therefore, in view of the above ocular and medical evidence, it is established that death of the deceased was homicidal in nature.

As far as complicity of the accused persons in the crime in question is concerned, in this case, there is only solitary eyewitness namely, PW-1 Dhaneshwari, daughter-in-law of the deceased, who has claimed to witness the incident that she went along with Hiralal to their agricultural field to block water course so that water is diverted to their field, at that time accused Badku and Posu came there. They objected Hiralal and asked him not to block the water course. When Hiralal did not stop, quarrel ensued, in that process, Posu attacked with Chatwar whereas, Badku attacked him with bamboo club. When Dhaneshwari tried to intervene, she was pushed as a result of which her glass bangles were broken and she sustained abrasions.

Learned counsel for the accused/appellants while relying on the decision of the Apex Court in the matters of **Hallu and others V. State of Madhya Pradesh** reported in **AIR 1974 SUPREME COURT 1936**, **State of Rajasthan Versus Bhanwar Singh** reported in **2005 (2) Acquittal 143** and **Bhola Singh V. State of Punjab** reported in **1999 CRI. L.J. 1132** argued that in this case, there is variance between ocular and medical evidence, as PW-1 Dhaneshwari has stated that the accused persons attacked the deceased with sharp part of the Chatwar whereas, no such injury was found on the body of the deceased. He further argued that she

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has stated that Hiralal was attacked on leg and hand whereas, no such corresponding injuries were found. There is no other witness. Therefore, on this count, her evidence cannot be believed. He further argued that in the site plan presence of Champi Bai has been shown in her field, but she has not been examined. Therefore, independent witness has not been examined.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have scrutinized evidence of PW-1 Dhaneshwari, who is daughter-in-law of the deceased, who reported the matter in the out post Anjora within 3 hours 45 minutes from the time of the incident. It is true that PW-1 Dhaneshwari is related witness. Settled law on the point is that evidence of related witness cannot be termed as interested witness or cannot be rejected merely on that ground, but evidence of such witness has to be scrutinized with care and circumspection in order to ascertain truthfulness of the version of such witness. PW-1 Dhaneshwari has stated that she had gone along with deceased Hiralal to the agricultural field where Hiralal was blocking the water course. Accused Posu and Badku came and attacked Hiralal. When she tried to intervene, Badku pushed her. Thereafter, the accused persons ran away. In para-4 of her cross-examination, she has stated that the accused persons attacked her father-in-law with lathi and iron part of Chatwar. He received injuries from the sharp side of the weapon. He was attacked for 10-11 times. But, on the suggestion of learned counsel for the defence that as to how many injuries her father-in-law received on the

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back, she replied that she cannot tell, how many injuries her father-in-law received on the leg, she cannot tell, how many injuries her father-in-law received on the hand, she cannot tell. But her father-in-law sustained injuries on hand, leg and back. When she intervened Badku pushed her. She raised cries.

Now, coming to the variance between ocular and medical evidence, as per the evidence of the investigating officer, on the information given by the accused persons lathi was recovered at the instance of Badku and Chatwar was recovered at the instance of Posu. In the presence of this witness both the accused persons attacked the deceased. As per the evidence of PW-8 Dr. Lal Mohammed, there was 'Y' shape crushed injury on the right parietal region in the size of 3 x 3 x 3 x ½ cm which was deep up to bone, there was another crushed injury on this part in the size of 6 x 1 cm, there was another injury in the size of 1 x ½ cm. Bruises on left temporal region. There was clotted blood on both eyelids. Blood was present in the skull. There was bruise in the size of 7 x 7 cm near scapular region, there was fracture of bone from left side crossing middle to right side of occipital bone, fracture extending from right side of frontal bone crossing mid line to left parietal bone. There was Haematoma on the brain. Therefore, as per the postmortem report, injuries were present all over head as well as scapular region. PW-1 Dhaneshwari has stated that the accused persons attacked on the head and back. Therefore, from the above injuries, hand, back and head are covered. The only difference is that no injury was noticed on the leg. Apart from that, there is no variance between medical and ocular evidence. Moreover, when two

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persons were attacking, it was difficult for any eyewitness whose father-in-law was being attacked to count exact place and number of injuries. As far as her evidence that accused Posu attacked from the sharp iron portion of Chatwar is concerned, the doctor has stated that there was crushed injury on the right parietal region deep up to the bone, looking to the nature of the above injury, it was possible that injury was caused by Chatwar. Moreover, the Chatwar was sent to doctor under Ex.P/14-A, on which doctor has given his report Ex.P/14 that it was possible to cause injuries which were found on the body of Hiralal with this Chatwar.

In the matter of **Thaman Kumar v. State of U.T. of Chandigarh** reported in **(2003) 6 SCC 380**, at page 389 para 16, the Apex Court held that

> "The conflict between oral testimony and medical evidence can be of varied dimensions and shapes. There may be a case where there is total absence of injuries which are normally caused by a particular weapon. There is another category where though the injuries found on the victim or of the type which are possible by the weapon of assault, but the size and dimension of the injuries do not exactly tally with the size and dimension of the weapon. The third category can be where the injuries found on the victim are such which are normally caused by the weapon of assault but they are not found on that portion of the body where they are deposed to have

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been caused by the accused. The same kind of inference cannot be drawn in the three categories of apparent conflict in oral and medical evidence enumerated above. In the first category it may legitimately be inferred that the oral evidence regarding assault having been made from a particular weapon is not truthful. However, in the second and third categories no such inference can straightaway be drawn. The manner and method of assault, the position of the victim, the resistance offered by him, the opportunity available to the witnesses to see the occurrence like their distance, presence of light and many other similar factors will have to be taken into consideration in judging the reliability of ocular testimony."

In the light of above judgment, if we see evidence of PW-1 Dhaneshwari and injuries found on the body of the deceased, there is no much variance between the ocular and medical evidence. The only difference is that she has stated that the accused persons also assaulted on the leg, but as per the medical report, no injury was found. Such variance can occur because at that time 2 persons were attacking, this witness might not have occasion to observe every injury inflicted by the accused persons meticulously.

The judgment cited by learned counsel for the appellants in the case of **Hallu and others** (Supra) is distinguishable on facts. In that case,

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the Apex Court held that "Normally when a witness says that an axe or a spear is used there is no warrant for supposing that what the witness means is that the blunt side of the weapon was used. If that be the implication it is the duty of the prosecution to obtain a clarification from the witness as to whether a sharp-edged or a piercing instrument was used as a blunt weapon." In that case, there was clear cut variance that sharp-edged weapon was used whereas no injury of the sharp-edged weapon was found on the body.

In the matter of **State of Rajasthan** (Supra) there was evidence of the eyewitness that the accused inflicted injuries with sword on the head of the deceased. As per the postmortem report, head injury was not caused by sword and was only possible by blunt weapon. The Court did not believe the evidence.

Similarly, case of **Bhola Singh** (Supra) being distinguishable on facts is also of no help to the accused/appellants for the reason that in that case allegation of the prosecution witnesses was that deceased Saun Singh was attacked by the blunt site of Gandasa. Appellant Bhola assaulted Saun Singh from the blunt side of the Gandasa on his right arm whereas, acquitted accused Jagsir Singh assaulted Saun Singh with Ghop dang wise which hit Saun Singh on the right arm at the same place where earlier the appellant Bhola had inflicted the injury. The Apex Court after relying on the evidence of the so-called eyewitnesses came to the conclusion that in order to show presence of the witnesses, assault from the blunt side of Ghop and Gandasa was deliberately adjusted. In the ordinary course when anyone is attacking with Gandasa and Ghop it

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cannot be expected that he will attack from the blunt side whereas, facts of the present case are entirely different. Even doctor has opined that injuries found on the head of the deceased could be caused by the Chatwar. Other injuries could be caused by lathi.

In the present case, there is no such variance because crushed injuries were already on the head of the deceased, bruises were also on the scapular region. Therefore, these judgments are of no assistance to the accused. Moreover, PW-1 Dhaneshwari has herself sustained injuries which establishes her presence on the place of occurrence. As per the evidence of PW-8 Dr. Lal Mohammed who has stated that he examined injuries of Dhaneshwari on 19-9-2000, there were 6 abrasions on the left forearm, there were 5 abrasions on the right forearm. Further, Dhaneshwari lodged the report within 3 hours 45 minutes with all promptness which is corroborated by the evidence of this witness in which it has been mentioned regarding weapon used by the accused persons as well as attack made by the accused persons. The distance of Anjora outpost from the place of occurrence is 7 km, therefore, injuries sustained by this witness as well as first information report corroborate evidence of this witness regarding her presence on the place of occurrence.

For the foregoing reasons, we are of the considered opinion that evidence of Dhaneshwari inspire confidence of the Court to the extent that accused Posu attacked with Chatwar and Badku attacked with bamboo club.

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As far as argument of learned counsel for the appellants that Champi Bai who has been shown in the site plan has not been examined is concerned, in cross-examination of the investigating officer, he has stated that in the site plan Ex.P/2 there is mention that Champi Bai was working in the field, but he has not taken her statement. There is nothing on record that Champi Bai was in fact able to see the occurrence from that place. Moreover, evidence of Dhaneshwari, as has been discussed earlier, inspire confidence of the Court. Therefore, non-examination of Champi Bai by the I.O., looking to the facts and circumstances, we do not find to be fatal for the prosecution.

In the result, we do not find any illegality or infirmity in the judgment of the trial Court. There is no ground to interfere with the finding of the trial Court which is based on evidence available on record. The appeal being devoid of merit is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
SUNIL KUMAR SINHA
Judge

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